

**Final Order Denying Refund: 04-20170526R
Gross Retail Tax
For the Year 2017**

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

Individuals are not entitled to treat monies received in a settlement as a vehicle trade-in on the purchase of a new car in order to decrease the amount of Indiana sales tax due on the purchase.

ISSUE

I. Gross Retail Tax - Indiana Vehicle Sales.

Authority: IC § 6-2.5-2-1; Sales Tax Information Bulletin 28S (December 2016).

Taxpayer protests the denial of refund of gross retail tax.

STATEMENT OF FACTS

Taxpayers are residents of Indiana who owned a Volkswagen vehicle. In a letter dated December 31, 2016, Taxpayers were notified that they were "eligible to participate in the 2.0-Liter Settlement Claims Program" in which Volkswagen would either buy back Taxpayers' vehicle or perform a free emissions modification on the vehicle. Taxpayers chose the buy-back option and in January of 2017, Volkswagen purchased Taxpayers' vehicle.

Shortly thereafter, Taxpayers purchased a 2017 Honda and paid Indiana sales tax on the purchase price of the vehicle. In April of 2017 Taxpayers filed a Claim for Refund ("GA-110L") with the Indiana Department of Revenue ("Department") asking for a partial refund of sales tax paid on the purchase of their Honda. The Department denied Taxpayers' claim and Taxpayers filed a timely protest of that denial. Taxpayers waived their right to a Hearing, opting instead for a final determination without a hearing. This Order Denying Refund results. Additional facts will be provided as necessary.

I. Gross Retail Tax - Indiana Vehicle Sales.

DISCUSSION

In support of their refund claim, Taxpayers argued that "had we traded the Volkswagen on the Honda, we would only have owed sales tax on the cost difference between the two vehicles." In denying the claim, the Department stated:

The purchases were separate transactions: A [] Volkswagen was purchased from the Volkswagen Group of America, which, during January 2017, the company purchased back as a part of a settlement. Subsequently, in 2017, [Taxpayers] purchased a Honda from [dealership]. Separate companies; separate transactions. There was no exchange, hence, no deductible.

Indiana imposes a sales tax on retail transactions. IC § 6-2.5-2-1 *et seq.* The person who acquires tangible personal property in a retail transaction is liable for the tax on the transaction. IC § 6-2.5-2-1(b). Generally, the sale of any motor vehicle is subject to Indiana sales and use tax unless such transaction is entitled to a statutory exemption. Indiana Sales Tax Information Bulletin 28S (December 2016), 20161228 Ind. Reg. 045160562NRA ("Sales Tax Information Bulletin 28S"). "Absent a statutory exemption, all sales of motor vehicles . . . purchased in Indiana are subject to Indiana sales and use tax." *Id.* The amount of sale subject to tax can be reduced by a trade-in allowance. However, that trade-in allowance only applies to "'like-kind exchanges' in which the motor vehicle . . . to be traded in is owned and titled in the name of the customer. A like-kind exchange means a motor vehicle traded for another motor vehicle" *Id.*

In this case, as a part of a settlement, Taxpayers had the option of either selling their vehicle back to Volkswagen or they could keep their vehicle and Volkswagen would perform a free emissions modification on the vehicle. Taxpayers chose to sell their vehicle back to Volkswagen and received approximately \$17,000 in that transaction. Later, Taxpayers purchased a more expensive Honda putting approximately \$22,000 in cash down on the purchase of the Honda. Because Taxpayers did not trade a vehicle in on the purchase, Taxpayers were charged Indiana sales tax on the entire purchase price of the Honda.

Taxpayers filed a GA-110L claiming a refund for the difference between what they actually paid in sales tax and what they would have paid in sales tax had the \$17,000 from Volkswagen been considered a vehicle trade-in. In support of their refund request, Taxpayers claim that they "had no choice but to sell/return the vehicle to Volkswagen" and that they "would have happily traded it in on another vehicle, but that was not an option." Taxpayer argues that "[t]here is no effective difference in trading-in the Volkswagen on another vehicle and doing the sell/purchase that we were required to do under court order." Further, Taxpayer notes that the "'buy-backs' by Volkswagen are handled on a state-by-state basis regarding sales and excise taxes. Most states have declared this to be considered a 'trade-in' and buyers in these states only pay sales tax on the cost difference."

While the Department is sensitive to Taxpayers' situation, it should be noted that Taxpayers *did* have a choice when it came to the treatment of their Volkswagen. Taxpayers could have opted to have Volkswagen perform a free emissions modification on their vehicle. Had they chosen this route, the vehicle would have been fixed and ready to drive with no cost to the Taxpayers. Further, regardless of how other states have chosen to treat the monies received by Volkswagen vehicle owners as a result of the Volkswagen settlement, Indiana has not opted to give any special or different treatment to these monies. Thus, the Department was correct to deny Taxpayers' GA-110L. The Volkswagen buy-back and the purchase of the Honda were two separate transactions. A cash down payment is not the same as a vehicle trade-in. Where a cash down payment is made on the purchase of a vehicle, the sales price of that vehicle remains subject to Indiana sales tax; the amount financed may be affected, but not the amount of sales tax due. Taxpayer's protest is respectfully denied.

FINDING

Taxpayer's protest is respectfully denied.

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